IN THE

SUPREME COURT OF THE UNITED STATES

OCT. TERM, 1964

No. [redacted] 40

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

LYMAN E. BUZARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California, entered in the above entitled case on October 8, 1964.

CITATIONS TO OPINIONS BELOW

The opinion of the California Supreme Court, printed in Appendix A hereto, is reported in 61 A.C. 927, 40 Cal.Rptr. 681.

The matter was also reviewed by the District Court of Appeal in and for the Fifth Appellate District on appeal from the denial of a writ of prohibition. This opinion is reported as *Buzard* v. *Justice Court,* 198 Cal.App.2d 814, 18 Cal.Rptr. 348.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(3).

QUESTION PRESENTED

The question presented involves an interpretation of the Soldiers' and Sailors' Civil Relief Act of 1940 (U.S.C.A. Title 50 (Appendix) section 574).

In general terms, the question is whether a non-resident serviceman is authorized to operate his motor vehicle in the State of California without the payment of fees thereon where the motor vehicle fees imposed by the state of his residence (Washington) have not been paid.

In more specific terms the question is whether the word "required" in the Relief Act as construed in the light of the Washington State statute prohibiting the driving of a vehicle on a public highway until appropriate fees have been paid, operates to create an exemption where, as here, the vehicle has not been driven in the state of residence.

STATUTES INVOLVED

The federal statute involved is Soldiers' and Sailors' Civil Relief Act of 1940 (U.S.C.A. Title 50 (Appendix) section 574), which is printed in Appendix B.

The Washington State statute involved is Revised Code of Washington, section 46.16.010, which is printed in Appendix C.

The California statutes involved are sections 6701 and 4000 of the California Vehicle Code, which are printed in Appendices D and E.

STATEMENT

A. Statement of the Case

An amended complaint was filed May 31, 1960, in the Justice Court of the Atwater Judicial District, County of Merced, State of California, charging respondent with a violation of section 4000 of the Vehicle Code of the State of California, in that respondent on or about February 26, 1960, did wilfully and unlawfully drive a motor vehicle upon a highway without said vehicle being registered in the State of California and without having paid the appropriate California fees.

Trial was had by the court without a jury. Judgment was entered finding respondent guilty as charged. A fine of $50 was imposed, the judgment being suspended and the respondent placed on probation for six months. Respondent filed his notice of appeal to the Superior Court, County of Merced, from the judgment of conviction on January 22, 1963.

Pursuant to California Rules of Court, section 62, et seq., the District Court of Appeal of the State of California in and for the Fifth Appellate District issued its order on January 7, 1964, transferring the appeal to its jurisdiction. The District Court of Appeal rendered its decision on April 21, 1964, affirming the judgment of conviction.

The California Supreme Court on June 16, 1964, acting upon the timely petition of respondent Buzard granted a hearing in the case. The Supreme Court rendered its decision on October 8, 1964, reversing the judgment of conviction. It is this decision that the petitioner, the State of California, seeks to have reviewed by this petition for certiorari.

The prior history of the case is that on June 1, 1960, respondent Buzard filed a petition for a writ of prohibition in the Superior Court of California, County of Merced, to restrain the Justice Court from proceeding to hear the charges of a violation of section 4000 of the California Vehicle Code. The Superior Court on August 2, 1960, denied the petition for a writ of prohibition. Respondent Buzard filed notice of appeal on September 27, 1960. On January 8, 1962, the District Court of Appeal in and for the Fifth Appellate District entered its order affirming the judgment of the Merced Superior Court, this decision is reported as *Buzard* v. *Justice Court,* 198 Cal.App.2d 814, 18 Cal.Rptr. 348.

B. Statement of the Facts [1]

The material facts are not in dispute. It was stipulated by counsel for respondent and the District Attorney at the time of trial in the Justice Court that the facts set forth in the amended complaint were

[1] The within statement is substantially identical to that recited by the California Supreme Court in its decision.

true. In addition, respondent Buzard testified (RT 4).[2] The stipulation and the testimony of respondent Buzard show the following:

Respondent Buzard is an officer in the United States Air Force and his permanent duty station is Castle Air Force Base situated in the County of Merced, State of California (RT 4). Respondent is a resident of the State of Washington (RT 4).

Respondent left the service in March 1956, having been on active duty since June 1951 (RT 5,6). He was recalled to active duty in June 1957 and assigned to Castle Air Force Base, such station being his permanent duty station (RT 7). On September 3, 1959, he was detailed to a squadron officers' school in Maxwell, Alabama, on temporary duty for approximately four months, returning to his permanent duty station at Castle Air Force Base in January 1960, where he has since been stationed (RT 7,8).

While in the State of Alabama on temporary duty, respondent purchased a 1959 model Oldsmobile on October 30, 1959. The car was registered in Alabama and all necessary fees paid by the vendor at the time of sale. Alabama license plates were issued and were valid in that state until September 30, 1960.

Respondent drove the Oldsmobile to California after his temporary duty in Alabama ended. During the times here in question, the vehicle had never been operated in the State of Washington and was never

[2] RT refers to Reporter's Transcript on appeal to the California Supreme Court.

registered and fees paid thereon in that state.

The testimony of respondent Buzard shows that he was stopped by the California Highway Patrol on or about February 26, 1960, the purpose being to check out-of-state auto licenses (RT 12); that following consultation with the Castle Air Force Base Provost Marshal, respondent appeared at an office of the Department of Motor Vehicles and for the purpose of discussing registration of his vehicle and the payment of fees (RT 15); that he was informed by an employee of the Department of Motor Vehicles that it was necessary for him to register the vehicle and to pay the appropriate license fees which were in excess of $100 (RT 16); that the requested fees were not paid; that thereafter a citation and complaint issued charging a violation of section 4000 of the Vehicle Code; and that during the summer of 1960, respondent went to the State of Washington and registered his vehicle in that state (RT 24).

C. Reasons for Granting the Writ

The California Supreme Court has held that respondent Buzard is exempt from the payment of motor vehicle fees of this State under the Relief Act although admittedly no motor vehicle fees have been paid to his state of residence, the State of Washington. The California court reaches this conclusion as the result of its interpretation of the word "required" as it appears in subdivision 2 of section 574 of the Relief Act.

The interpretation of the Relief Act by the California Supreme Court reaches a result which was never intended by the Congress. No other court, state or federal, has construed the Relief Act to grant such an exemption here under consideration. It is, of course, recognized that an erroneous decision relating to the assessment of motor vehicle fees of one serviceman would not warrant a request to this Court for certiorari. However, it must be recognized that the numerous military installations within this State are manned by a large number of nonresident military personnel. The exact extent of their liability for the payment of motor vehicle fees to this State is important to them and is of a considerable economic importance to the State of California. From the State's standpoint the decision frustrates the administration of the State's tax policies and contrary to the California Supreme Court's assertion, the result of the decision also frustrates those purposes of registration designed to permit motor vehicle identification and in furtherance of proper law enforcement. It is therefore submitted that the question here presented is of great importance to both the State of California and the nonresident military personnel stationed within this State.

D. Applicable California Law

The provisions governing exemptions of nonresidents from payment of vehicle fees in this State are contained in Article I (commencing at section 6700),

Chapter 4, Division 3, Vehicle Code. Section 6700 of the Vehicle Code (all section references are to the Vehicle Code unless otherwise indicated) provides that a nonresident, subject to exceptions not applicable here, may operate his vehicle in this State without payment of fees if the vehicle is duly registered and fees have been paid in the state of his residence.

The general exemption provision for nonresidents under section 6700 is applicable to members of the armed forces pursuant to section 6701, which provided at the times here in question:

> "Any nonresident owner of a foreign vehicle who is a member of the armed forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. *Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty.*" (Emphasis added.)

The last sentence of this section was added by Stats. 1959, Chapter 1921.

In summary, a nonresident member of the armed forces is exempt from the vehicle fees in this State pursuant to sections 6700 and 6701 under the following situations:

1. If the vehicle is registered in the domiciliary state;

2. If the vehicle is registered in a foreign state where the member was regularly assigned a permanent duty station.

Under the facts as set forth in this case, respondent Buzard is not within these exceptions. The vehicle was not registered in the State of Washington, the state of his domicile, and it was not registered in a foreign state where he was regularly assigned a permanent duty station. Thus, California license fees were due and payable when the vehicle was operated in the State of California pursuant to section 4000. Violation of this section is a misdemeanor (§ 40000).

E. Exemptions Under the Relief Act

The Relief Act generally exempts a serviceman's personal property from taxation by all taxing authorities except the state of his residence. Section 574 of the Act provides that the personal property of a serviceman shall not be deemed to have a situs in any state of which he is not a resident. Thus, the Act prevents double taxation which otherwise could result by a serviceman's being stationed under military orders in a state other than his resident state.

The Relief Act treats motor vehicles in a different fashion in that to avoid the tax on a vehicle by a state where the serviceman is stationed, the required motor vehicle tax of the resident state must have been paid. The exact wording of the Act setting forth such requirement is as follows:

> "(2) When used in this section (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided, that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.*" (Emphasis added.)

No such requirement exists as to other items of personal property.

The case of *Woodroffe* v. *Village of Park Forest* (D.C. Ill.), 107 F.Supp. 906, clearly demonstrates that a member of the armed forces must pay the registration fees in the state of his domicile in order to avoid taxation of the vehicle in a foreign state where he is stationed for military duty. In that case, a municipality of the State of Illinois attempted to tax the vehicle of a member of the armed forces stationed in Illinois, such member being a domiciliary of the State of Pennsylvania. The member had paid all required license fees to the State of Pennsyvania.

The court in construing section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940 stated at page 910 as follows:

> "It is the view of the Court that the provisions of the aforementioned statute exempt the petitioner from the payment of the vehicle tax to the Village of Park Forest. The language of this section is clear. A person is not to be considered as having lost residence when the sole reason for his absence is compliance with military or naval orders, nor is he to be considered as having acquired a new residence when he is absent solely in compliance with these orders. *Moreover, personalty of such military person, which by this section includes a motor vehicle, shall not be considered to have a situs for tax purposes in any political subdivision, of which such person is not a resident provided that he pays the required license fees to that political subdivision of which he is a legal resident.* In the case before the bar, it is not disputed that the sole reason for the petitioner's departure from his residence in Delaware County, Pennsylvania, on August 29, 1947, was his compliance with military orders to report to active service. Nor is it disputed that the sole reason for his presence at Fifth Army Headquarters, Chicago, Illinois, is the compliance with those orders. The petitioner has never lost his residence in Delaware County, Pennsylvania, nor has he acquired a residence in the Chicago area. *Since, therefore, he is not a resident of Park Forest, Illinois, and since it is undisputed that he has paid all required license fees to the State of Pennsylvania, the petitioner falls within the pur-*

view of Section 17 (50 U.S.C.A. (Appendix) 574) of the Act, and is not required to pay the vehicle tax to the respondent." (Emphasis added.)

A similar result was reached in the case of *Whiting* v. *City of Portsmouth, Va.*, 118 S.E.2d 505. In that case a serviceman was convicted and sentenced to pay a fine for violating a tax ordinance of the City of Portsmouth which required every person having a place of residence in the city to pay an annual tax of $10 on each motor vehicle operated or kept or used in the city. The defendant enlisted in the United States Navy from the State of Colorado and claimed that state as his domiciliary state. In 1958, the serviceman purchased an automobile and secured Virginia license tags for it. He operated the vehicle in Portsmouth without securing the license required by the city ordinance. In affirming the judgment of conviction, the court stated at pages 506–507:

"In paragraph (2) of said § 574 it is provided that the term 'personal property' shall include tangible and intangible personal property, including motor vehicles, and the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: '*Provided,* That the license, fee, or excise required by the State * * * of which the person is a resident or in which he is domiciled has been paid.' " (Emphasis theirs.)

* * * * * * *

"The tax levied by the City of Portsmouth on the appellant's automobile is not a property tax,

but a license tax, assessed against the owner of the automobile for the privilege of using it on the streets of the city. 5-A Am.Jur., Automobiles and Highway Traffic, §81, p. 283; 60 C.J.S. Motor Vehicles, §59, p. 238. Such license tax falls within the provision of paragraph (2) of said §574, under which the appellant would be exempt from payment of the Portsmouth license tax only if he had paid a license tax thereon in Colorado, where he claimed his residence to be. Since it is admitted that he had not paid such license tax in that State, or elsewhere than in Virginia, he is therefore not exempt from the payment of the license tax assessed by the city of Portsmouth. Such has been the view of the Attorney General of Virginia in several instances. See Opinions of the Attorney General, 1948-1949, page 166; 1954-1955, page 155; 1958-1959, page 190."

The California Supreme Court construed the word "required" as used in the Relief Act in the light of the Washington State statute providing that "It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display number plate. . . ." (Rev. Code of Wash., § 46.16.010) It was then held that since respondent had not driven his vehicle in the State of Washington, no fees were *required* there within the meaning of the proviso in the Relief Act and consequently this State could not tax the vehicle.

It is petitioner's position that the word "required" as used in the Relief Act means the fees levied, imposed, exacted, or charged by the resident state.

The State of Washington, as in the case of all states, has enacted laws providing for and imposing motor vehicle fees. The mere fact that the State of Washington does not apply penal sanctions for nonpayment until a person drives the vehicle in the state without payment of fees should not mean that for purposes of exemption under the Relief Act that fees are not "required" by the resident state. Most, if not all, states enacted similar penal sanctions and Congress could not have intended that a serviceman must first drive his vehicle in the resident state in order to satisfy the exemption as to motor vehicles. Stated otherwise, section 46.16.010 of the Revised Code of Washington does not establish a motor vehicle tax for that state. The tax is provided for in other provisions. This section merely provides for penal sanctions for driving in that state without a proper license and display plates. Other sections of the Washington statute "require" the tax (Rev. Code of Wash., § 46.16.060, et seq.).

The Attorney General of the State of Virginia has in effect construed the term "required" as meaning "imposed". On the question of motor vehicle tax exemption for servicemen, the following is stated in Virginia Attorney General Reports (July 1, 1958–June 30, 1959, p. 191):

> "In light of the above quoted language, I am of the opinion that military personnel residing in

Caroline County solely as a result of compliance with military orders stationing them at Camp A.P. Hill would be able to claim the exemption conferred by this statute, if all license fees imposed in the States of their permanent homes have been paid. This view is consistent with that heretofore taken by this office and that enunciated by the Federal courts. See, Report of the Attorney General (1954–1955), page 155; *Woodroffe* v. *Village of Park Forest,* (D.C. Ill.), 107 F.Supp. 906. Thus, an individual having the status under consideration would not be required to pay the motor vehicle license tax imposed by Caroline County (1) if a similar tax is imposed by the political subdivision of his permanent home State and that tax has been paid or (2) if no local tax is imposed by the political subdivision of his permanent home State. However, if a local motor vehicle license tax is imposed by the political subdivision of the permanent home State of such an individual, and that local tax has *not* been paid, he would, in my opinion, be subject to the motor vehicle license tax ordinance of Caroline County. Moreover, military personnel in Virginia, who do not reside on a military post, may operate their motor vehicles in Virginia indefinitely, without paying the license tax imposed by the Commonwealth, if such personnel have paid the license fees imposed by their permanent home States."

The California Supreme Court relies upon the case of *Dameron* v. *Brodhead,* 345 U.S. 322, 97 L.Ed. 1041, 73 S.Ct. 721. That case is not in point. In *Dameron,* the court was concerned with taxes assessed by the

City of Denver on household goods kept in an apartment in that city by an Air Force officer who was a resident of Louisiana. The court dealt only with the provisions of subdivision I of section 574 of the Relief Act, stressing the language providing that "personal property shall not be deemed to be located or present in or to have a situs for taxation in" the state where the person sought to be taxed was present solely because of military or naval orders. The case did not deal with the proviso in subdivision 2 pertaining to taxation of motor vehicles.

The decision of the California Supreme Court frustrates those purposes of registration designed to promote motor vehicle identification in aid of proper law enforcement. The decision authorizes nonresident servicemen to operate their vehicles in this State without the registration of the vehicle or the obtaining of license plates since California has no statutory provisions for the registration of such vehicles and the issuing of license plates without the payment of fees.

Public safety dictates that all vehicles be properly registered. If respondent's argument were adopted it would mean a serviceman from the State of Washington stationed in California for a number of years (respondent has been here over six years) could purchase a new car each year and never register a single vehicle in California so long as he did not drive in his home state. A car ineffectively licensed is not only tempting to the car thief, but it becomes

a public hazard in the event of an accident. In the hit-and-run accident witnesses almost instinctively look for the license plate on the hit-run car.

There is no doubt that Congress had these considerations in mind in treating motor vehicles differently than personal property generally and in providing that license fees would be paid either in the state of residence or in the state where the serviceman was stationed thus insuring effective registration and identification of motor vehicles.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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APPENDIX A

OPINION OF THE CALIFORNIA SUPREME COURT

People v. Buzard, 61 A.C. 927, 40 Cal.Rptr. 681

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

THE PEOPLE, *Plaintiff and Respondent,* v. LYMAN E. BUZARD, *Defendant and Appellant.*		Crim. 8013

Lyman E. Buzard appeals from a judgment following his conviction of a violation of section 4000 of the Vehicle Code, a misdemeanor.[1] His attempt by way of prohibition to foreclose the instant proceedings was unsuccessful. (Buzard v. Justice Court, 198 Cal.App.2d 814.)

Defendant is an officer in the United States Air Force. At all times herein pertinent he was a resident of the State of Washington and was stationed at Castle Air Force Base in Merced County, California. Between September 3 and December 19, 1959, he was temporarily assigned to duty for military training at

[1] Section 4000 of the Vehicle Code provided in part at the time of defendant's arrest: "No person shall drive . . . any motor vehicle . . . upon a highway unless it is registered and the appropriate fees have been paid under this code."

Maxwell Air Force Base in Alabama. While there he purchased an automobile, which he registered in that state in his name, and obtained Alabama license plates valid through September 30, 1960.

On defendant's return to Castle Air Force Base he drove his automobile from Alabama and has regularly used it in California since that time. While so using it he was stopped by a highway patrol officer and advised that the vehicle was required to be registered in California. He thereafter attempted to register the automobile but was informed by an official of the Department of Motor Vehicles that he could not do so without first making a payment in excess of $100 in fees and penalties. He refused to make the demanded payment and his arrest under section 4000 followed on April 11, 1960.

Defendant's refusal to make payment of the fees and penalties and his defense against the instant charges are based on the contention that section 4000, insofar as it required the payment of fees and penalties, did not apply to him because of the Soldiers' and Sailors' Civil Relief Act of 1940. (50 U.S.C.A. App., § 574.) That act provides in section 574, subdivision (1) that "the personal property" of a serviceman "for purposes of taxation" shall not be deemed to have a situs in any state of which he is not a resident. In subdivision (2) automobiles are included as "personal property" within the meaning of the statute and the term "taxation" is applied to automobile licenses, fees and excises *"Provided,* That the license,

fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."[2]

The applicable statute of defendant's domiciliary state provides: "it shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display number plates. . . ." (Rev. Code of Wash., § 46.16.010.) Prior to his arrest defendant did not drive his automobile into or otherwise enter the State of Washington after the purchase of the vehicle, nor did he register the automobile there.[3]

Defendant does not contend that California may not, as an exercise of its police power, require him to register his automobile. In fact, his attempt to register the vehicle independently of the payment of fees and penalties was frustrated by the department. Defendant's position is simply that the Soldiers' and Sailors' Civil Relief Act of 1940 (hereinafter the Relief Act) prohibits the collection of such fees as an incident to a proper exercise of the police power or otherwise. As a consequence of the narrow question thus raised by the defendant, contentions which look to the purpose of registration in furtherance of

[2] Section 574 was amended in 1962 by Public Law 87-771 in a manner not here pertinent.

[3] Following the arrest, however, defendant registered the automobile in accordance with the Washington statute when he first drove the automobile into that state.

proper law enforcement and administration fail to address themselves to the issue.

Defendant urges that he was not required to obtain a vehicle license and plates by his domiciliary state except as a prerequisite to the operation of his vehicle "over and along a public highway" of that state; that he has not driven his vehicle on such public highways; that, accordingly, no license charges or registration fees became due; that he has satisfied all licensing and registration obligations which that state required of him, and that he has likewise satisfied the proviso of the Relief Act. The argument meets the literal and commonsense meaning of the pertinent statutory provisions.

We are urged by the People to follow the opinion of the Supreme Court of Appeals of Virginia, wherein a city of that state was held to be entitled under the Relief Act to collect an additional vehicular licensing fee from a serviceman who had voluntarily registered and licensed his automobile in that state although claiming Colorado as his domicile. (Whiting v. City of Portsmouth, 118 S.E.2d 505.) But it does not appear from the opinion in that case whether the serviceman was *required* and had failed to pay fees in Colorado. Thus the issue herein raised was not considered or resolved by the Virginia court.

We cannot, as is urged, conclude that subdivision (2) is intended to work to the serviceman's advantage only where a charge has been made by and paid to his domiciliary state. The statute is not couched in terms

which flatly require the serviceman to have paid a fee, but rather in terms which accord to him the benefit when charges "required by the State" have been paid. These are the only charges which he must pay and when there are no charges made there must likewise be no *requirement* that he pay them. Any other conclusion would lead us to the very results which the Relief Act, by its purpose, seeks to avoid. If, for instance, California may exact the instant charges from defendant, then so may any other state into which he brings his vehicle until such time as he enters his domiciliary state and pays the fees there required for the first time. Such a narrow construction would frustrate the obvious beneficent purpose of the act and fail to heed the direction of the Supreme Court that "The Act must be read with an eye friendly to those who dropped their affairs to answer their country's call." (Le Maistre v. Leffers, 333 U.S. 1, 6; see also Plesha v. United States, 227 F.2d 624.)

It is further complained that the foregoing construction of the Relief Act permits a serviceman to escape the payment of fee altogether. The complaint is fairly answered by the Supreme Court in *Dameron* v. *Brodhead,* 345 U.S. 322, where the court was confronted by an attempt of the City of Denver to assess a personal property tax on a serviceman's furniture. The city argued that the Relief Act did not apply because the state of domicile did not impose any personal property taxes on the furniture. The court rejected this contention, saying at page 326: "The

short answer to the argument that it [the Relief Act] therefore only applies where multiple taxation is a real possibility is that the plain words of the statute do not say so. . . . There is no suggestion that the state of original residence must have imposed a property tax. . . . In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders."

Although the court in *Dameron* had before it a question involving the taxation of personal property, nevertheless the Relief Act expressly includes within the purview of section 574 the licensing of automobiles as taxation of personal property. It is true that automobiles are dealt with separately in subdivision (2) but the different treatment is only in respect to the manner in which vehicles may qualify to be treated as other personal property, and where it appears that the serviceman has paid such charges as may have been assessed by his domiciliary state the language of the statute leaves no room for different treatment insofar as tax or other charges are concerned. As the *Dameron* case cannot be distinguished in any material respect it follows that if the domiciliary state chooses not to exact a vehicular registration or licensing charge from its residents the prohibition against other states from doing so

would appear to be well within the intent and purpose of the Relief Act.

It is thus manifest that defendant was not subject to those provisions of section 4000 of the Vehicle Code requiring the payment of fees and penalties, and that his conviction thereunder is improper. In view of the foregoing it is not necessary that we determine the merit, if any, in defendant's further contention that the failure to exempt him from registration under other statutory provisions is a denial of the equal protection of the laws. (Veh. Code, § 6701.)

The judgment is reversed.

PEEK, J.

WE CONCUR:

TRAYNOR, C. J.
McCOMB, J.
PETERS, J.
TOBRINER, J.
* SCHAUER, J.
* DOOLING, J.

* Retired Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

APPENDIX B

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

(In Effect 1960)

Section 574:

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, posses-

sion, or political subdivision, or district: *Provided,* That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

APPENDIX C

REVISED CODE OF WASHINGTON
(In Effect 1960)

Vehicle Licenses

Section 46.16.010:

It shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided: *Provided,* That these provisions shall not apply to farm tractors and farm implements temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law: *Provided further,* That these provisions shall not apply to equipment defined as follows:

"Special highway construction equipment" is any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track

laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (1) are in excess of the legal width or (2) which, because of their length, height or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (3) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

(a) Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

APPENDIX D

CALIFORNIA VEHICLE CODE

(In effect 1960)

Section 6701:

Any nonresident owner of a foreign vehicle who is a member of the armed forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty.

APPENDIX E

CALIFORNIA VEHICLE CODE
(In Effect 1960)

Section 4000:

No person shall drive, move, or leave standing any motor vehicle, trailer, semi-trailer, pole or pipe dolly, or auxiliary dolly upon a highway unless it is registered and the appropriate fees have been paid under this code.

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